

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NOS. 2017-207-E, 2017-305-E AND 2017-370-E

IN RE:)	
)	
Friends of the Earth and Sierra Club,)	
)	
Complainants/Petitioners,)	
v.)	
)	
South Carolina Electric & Gas Company,)	
)	
Defendant/Respondent.)	

IN RE:)	
)	
Request of the Office of Regulatory Staff)	
For Rate Relief to South Carolina Electric &)	
Gas Company's Rates Pursuant to S.C. Code)	
Ann. § 58-27-920)	

IN RE:)	
)	
Joint Application and Petition of South Carolina)	
Electric & Gas Company and Dominion Energy,)	
Incorporated for Review and Approval of a)	
Proposed Business Combination between)	
SCANA Corporation and Dominion Energy,)	
Incorporated, as May Be Required, and for a)	
Prudency Determination Regarding the)	
Abandonment of the V.C. Summer Units 2 & 3)	
Project and Associated Customer Benefits and)	
Cost Recovery Plans)	

**JOINT PRE-HEARING BRIEF
OF THE ELECTRIC COOPERATIVES OF SOUTH CAROLINA, INC.
AND CENTRAL ELECTRIC POWER COOPERATIVE, INC.**

In accordance with the Order No. 2018-102-H dated August 3, 2018, and Order No. 2018-114-H dated August 23, 2018, The Electric Cooperatives of South Carolina (“ECSC”) and Central Electric Power Cooperative, Inc. (“Central”) (jointly referred to as “Intervenors”) submit this Pre-Hearing Brief.

Interest of ECSC and Central

ECSC consists of member electric cooperatives organized in the State of South Carolina and serves as a legal and regulatory representative of its member electric cooperatives. ECSC is the state-wide service and trade association for electric cooperatives in the state comprised of nineteen consumer-owned electric cooperatives, one wholesale power supply cooperative (Central), one transmission and distribution services cooperative and one materials supply cooperative. Together, ECSC’s members operate the largest electric distribution system in the state. More than 1.5 million South Carolinians in all 46 counties use electricity from electric cooperatives. Central is a generation and transmission electric cooperative formed under S.C. Code Section 33-49-10, *et seq.* Central is engaged in the purchase, transmission and sale of electric power to twenty (20) distribution electric cooperatives throughout the State of South Carolina.

ECSC and Central have a substantial interest in the issues to be considered in this proceeding. The construction of V.C. Summer Units 2 and 3 at Jenkinsville (“the Project”) was a joint project of South Carolina Electric & Gas (“SCE&G”) and the Public Service Authority of South Carolina (“Santee Cooper”). Under a contract between Central and Santee Cooper, Central and the members of ECSC have been paying for approximately seventy percent of Santee Cooper’s capital costs, including the Project. The contractual relationship with Santee Cooper gives ECSC and Central a direct and significant interest in this proceeding in which the Commission will consider the abandonment of the Project and what abandonment costs should

be borne by ratepayers of SCE&G. Determinations made in this proceeding may have an impact on the issues of whether and to what extent cooperative members must pay expenses related to the Project.¹

Previous Involvement by ECSC and Central with the Project

Since the inception of the Project, ECSC and Central have recognized that the Project would be critically important to their members and have attempted to both monitor its progress and take actions intended to assist the Project in reaching a successful conclusion. Actions taken by Central and ECSC include:

- working to bring other owners to the project so that Santee Cooper could reduce its ownership interest to a level more appropriate to its capacity needs;
- working to persuade the Environmental Protection Agency to revise the Clean Power Plan so that the Project would count towards South Carolina's carbon reduction obligation;
- assisting in the effort to persuade Congress to extend the deadline for the Project to qualify for production tax credits;
- intervening in Docket 2016-223-E, in which this Commission approved amendments to the EPC contract for the Project.

This extended involvement by ECSC and Central reflects the concern of the organizations for the financial impact of the Project on the members that they represent. All of the actions taken by ECSC and Central were taken in an effort to minimize the potential impact of the Project, either by reducing the 45% ownership share of Santee Cooper or by advocating for actions that would make the project more financially viable.

¹ Central has been named as a defendant, along with Santee Cooper, in the case of *Cook et al. v. South Carolina Public Service Authority et al.* Civil Action No. 2017-CP-25-335. Central has asserted cross-claims against Santee Cooper in that action, including claims that Santee Cooper lacks the statutory authority to charge any rate based on an abandoned generating plant and claims that statutory and contractual provisions require that Santee Cooper's rates be just and reasonable.

ECSC and Central Support the Position of ORS Regarding Abandonment

In continuing their involvement with the Project, ECSC and Central have intervened in these consolidated proceedings and have participated in discovery by reviewing documents produced and by attending depositions. Based on that involvement in discovery, Central and ECSC support the position taken by the ORS with regard to the recovery of abandonment costs by SCE&G.

The provisions of S.C. Code Ann. §58-33-280(K) govern the consideration by this Commission of SCE&G's petition for abandonment. Under that provision SCE&G (1) bears the burden of proving that its decision to abandon the Project was prudent and (2) is allowed to recover in rates its capital costs and AFUDC associated with the Project except to the extent that this Commission determines that SCE&G was imprudent in failing to avoid those costs. It is significant that §58-33-280(K) states that the review and disallowance of imprudently incurred costs must be done "[w]ithout limiting the effect of Section 58-33-275(A)." S.C. Code Ann. §58-33-275(A) addresses the preclusive effect of a base load review order:

(A) A base load review order shall constitute a final and binding determination that a plant is used and useful for utility purposes, and that its capital costs are prudent utility costs and expenses and are properly included in rates so long as the plant is constructed or is being constructed within the parameters of:

- (1) the approved construction schedule including contingencies; and
- (2) the approved capital costs estimates including specified contingencies.

The pre-filed testimony and exhibits submitted by the ORS and the deposition testimony of SCE&G employees who were charged with monitoring the progress of the Project show that by March 2015 the Project was not being constructed "within the parameters" of the approved construction schedule or the approved capital cost estimates. Because the Project was not within those parameters, this Commission has the authority under §58-33-280(K) to consider disallowing costs incurred after the date when the Project was no longer within the cost and

schedule parameters. This provision, tying recovery of costs on abandonment to construction of the Project within cost and schedule parameters approved by the Commission, is indispensable to the proper functioning of the Base Load Review Act (“BLRA”). Under the BLRA, because the project was not within these parameters, this Commission’s previous prudence determination cannot be used to shield SCE&G from a review and disallowance of its costs incurred after March 2015.

Conclusion

ECSC and Central have followed the Project closely and have, in their limited role as representatives of potentially impacted cooperative members, tried to provide assistance to the owners to make it successful. At this point it is the goal of ECSC and Central to do what they can to minimize the impact of the failure of the Project on cooperative members. Accordingly, ECSC and Central urge the Commission to adopt the ORS position that Project costs incurred after March 2015 should be disallowed as imprudently incurred.

Respectfully submitted,

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